IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6303 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHASHIKANT CHHAGANLAL PATEL

Versus

NANDKISHORE OMKARMAL GUPTA

Appearance:

1. Special Civil Application No. 6303 of 2003

MR ND NANAVATI, learned Sr. Advocate with

YN RAVANI for Petitioner No. 1-2

MR JT TRIVEDI for Respondent No. 1

MR RV DESAI, Asst. Govt. Pleader for Respt No. 2-4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 06/05/2003

ORAL JUDGEMENT

1. Rule. Mr. J.T. Trivedi, learned advocate appearing on caveat for respondent No.1 appears and

waives service of rule on behalf of the respondent No.1. Upon the direction of the Court, Mr. Desai, learned Assistant Government Pleader has appeared for the respondents No. 2, 3 and 4 and waives service of rule on behalf of respondents No. 2, 3 and 4. On the joint of request of the learned advocates, this matter is heard on merits for final disposal.

2. The present petition is preferred by the petitioners challenging the legality and validity of the order dated 28.3.2003 passed by the Principal Secretary, Revenue Department (Appeals) [Annexure 'A'] whereby the order of the Collector dated 26.12.2000 is set aside and the Collector is further directed to return the papers to the Mamlatdar for investigation as to whether there is any breach of section 63 of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as the Tenancy Act].

3. The contention raised on behalf of the petitioners by Mr. N.D. Nanavati, learned senior counsel appearing with Mr. Y.N. Ravani is that the Revenue Secretary has not considered the aspect regarding pendency of the Revision before the Gujarat Revenue Tribunal being Revision No. 105 of 2002 and staying of the order dated 1.10.2002 passed by the Deputy Collector. Mr. Nanavati further submitted that once the Mamlatdar and A.L.T. as per order dated 30th May 2002 had found that there is a breach of the provisions of section 63 and the land came to be forfeited under section 84 of the Tenancy Act, against which appeal was also preferred by the petitioners which came to be dismissed on 1.10.2002 against which Revision was preferred before the Tribunal, and the matter is pending before the tribunal, and therefore the Secretary, while exercising revisional jurisdiction under the Bombay Land Revenue Code, could not have directed for holding an inquiry under section 63 of the Tenancy Act. In his submission, if such observations in the operative portion of the order passed by the Secretary is allowed to stand, it may result into a denovo inquiry under section 63 of the Tenancy Act which is concluded atleast before two forums, viz. the Mamlatdar and Deputy Collector, and is pending before the Tribunal. Mr. Nanavati fairly submitted that the petitioners are not challenging the other portion of the order passed by the Secretary, i.e. so far as it relates to setting aside the order of the Collector dated 26.12.2000. He therefore submitted that the present petition is essentially for challenging the observations for holding an inquiry under section 63 of the Tenancy Act.

4. On behalf of the respondent No.1, Mr. Trivedi appearing on caveat, and who is also appearing thereafter when the matter is taken up for final hearing, has submitted that as such, since the Revision was preferred before the Tribunal after filing of the Revision before the State Government, the aforesaid aspect of pendency of the Revision before the Tribunal has not been pointed out to the Secretary. However, he fairly submitted that it is true that Mamlatdar has passed the order dated 30th May 2002 against which the respondent had also preferred an appeal being appeal No. 426 of 2003, which, as per the statement made by Mr. Trivedi, has been disposed as per order dated 13.3.2003 passed by the Deputy Collector. Mr. Trivedi submitted that the respondent No.1 is also contemplating to file a Revision against the said decision dated 13.3.2003 of the Deputy Collector before the Gujarat Revenue Tribunal. He, therefore, submitted that as such, if the order of the Secretary is clarified to the effect that ultimately the rights of the parties shall be governed by the final outcome of the Revision which is pending before the Tribunal and which would be filed by the respondent No.1 before the Tribunal against the order dated 13.3.2003 passed by the Deputy Collector, the respondent No.1 would not object to such clarification in this regard.

5. So far as the respondents No. 2,3, and 4 are concerned, since they had acted as a quasi-judicial authorities, learned Assistant Government Pleader has left the matter to the Court.

6. Having considered the above submissions of learned counsel Mr. Nanavati as well as Mr. Trivedi, I find that it is true that the Secretary of the State Government, while hearing the Revision Application on 31.3.2003, has not considered the aspect regarding pendency of the Revision No. 105/2003 before the Gujarat Revenue Tribunal and the order dated 30.10.2002 passed by the Tribunal staying the operation and implementation of the order dated 1.10.2002 passed by the Deputy Collector in Tenancy Appeal No. 22 of 2002. Normally, it was for the parties who appeared before the Secretary to disclose the said aspect but since no material is produced on record to show that the order dated 30.10.2002 of the Gujarat Revenue Tribunal was served upon the respondent No.1 at the relevant point of time, and since Mr. Trivedi, during the course of his argument, has submitted that at the relevant point of time the relevant papers were not received by his clients from the Gujarat Revenue Tribunal, I am not further examining the question

regarding suppression of fact before the Secretary since it is not necessary in view of the facts and circumstances and the reasons stated hereinafter on merits.

7. Even otherwise also, on merits, I find that there is a considerable force in the submission made by Mr. Nanavati that when the matter was concluded before the Mamlatdar on the question of breach of section 63 of the Tenancy Act, there was no question of directing for holding inquiry at the level of Mamlatdar. Even otherwise also, the State Government was exercising powers under the Bombay Land Revenue Code, and, therefore, no such mandatory directions could have been given to the other competent authority under a different Act to hold such inquiry. At the most some observations could be made, by leaving it to the discretion of the authorities to initiate proceedings or not. However, in the present case, there is no dispute on the point that the proceedings for breach of section 63 of the Tenancy Act have concluded at the level of Mamlatdar, and, therefore, in my view, neither by way of directions nor by way of any observations, it was required for the Secretary to instruct the Collector for holding an investigation at the level of Mamlatdar as to whether there is any breach of section 63 of the Act. If such an observation and direction is allowed to stand, it may result into not only putting the clock back, but it may also result into frustrating the rights of the parties concerned, more particularly of the petitioners and the respondent No.1 herein and also of the State Government, which are yet to be fianlised by the Tribunal in the Revision which is pending before it. Therefore, in my view, the observations and the instructions in the operative portion of the order of the Secretary of the State for instructing the Collector to direct the Mamlatdar to inquire regarding breach of section 63 of the Tenancy Act, cannot be allowed to stand, and it can be said that to that extent the Secretary had exceeded in exercise of jurisdiction and has further committed error apparent on the face of the record. Hence such observations and directions deserve to be expunged.

8. In view of the aforesaid discussion, I find that the following order shall meet with the ends of justice.

(i). The order of the State Government dated 28.3.2003 passed in Revision No. 39 of 2001 at Annexure 'A' to the petition shall stand only to the extent of quashing and setting aside the order dated 26.12.2000 of the Collector, and the rest

of the operative portion of the order shall remain expunged and quashed.

(ii). It will be open to the Gujarat Revenue Tribunal to decide in accordance with law Revision No. 105/02 preferred by the petitioner which is pending before it, and the Revision if any that may be filed by the respondent No.1 herein against the order dated 13.3.2003 passed by the Deputy Collector. It is is clarified that ultimately the rights of the parties shall be governed by the final outcome of the aforesaid Revisions and it shall be open to the parties to raise all contentions available under law, before the Tribunal.

(iii). It is further clarified that continuation of the revenue entry in the revenue record shall be also subject to the final decision which may be ultimately given by the Tribunal regarding rights of the parties, and the same shall be without prejudice to the rights of the parties to challenge such decision of the Tribunal in accordance with law.

9. The petition is allowed only to the aforesaid extent. Rule made absolute accordingly with no order as to costs.

[JAYANT PATEL, J.]
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